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In re Application of
MIHAN, Shahram et al.
Application No.: 10/538,540
PCT No.: PCT/EP03/14437
Int. Filing Date: 18 December 2003
Priority Date: 20 December 2002
Docket No.: LU 6084 (US)
For: COPOLYMERS OF ETHYLENE WITH
 α -OLEFINS

DECISION

ON PETITION UNDER

37 CFR 1.10(d)

This decision is in response to applicants' "Petition to Correct Filing Date Under 37 CFR 1.10(d)," filed 25 July 2005.

BACKGROUND

On 18 December 2003, applicant filed international application PCT/EP03/14437, which claimed a priority date of 20 December 2002. A copy of the international application was transmitted to the Office by the International Bureau on 08 July 2004. Accordingly, the thirty month period for paying the basic national fee expired at midnight on 20 June 2005.

Applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, the basic national fee. It was accorded a filing date of 11 June 2005.

On 25 July 2005, applicant submitted the instant petition, accompanied by a copy of the transmittal letter, Express Mail label and Express Mail tracking information from USPS.

DISCUSSION

In the instant petition, applicant requests that the receipt date be amended to 10 June 2005. The Express Mail mailing label lists the "date in" as 11 June 2005.

Applicant argues that the application was submitted to the USPS on 10 June 2005. 37 CFR § 1.10(d) allows an applicant to petition to correct an incorrectly entered "Date In" of an Express Mail receipt and states that:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS

was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items (1), (2) and (3). The petition was filed promptly and the papers in the file reflect the mailing label number. Applicant has furnished a print out from USPS track and confirm database indicating the package was accepted by USPS on 10 June 2005 and submitted a letter on USPS stationery from a Supervisor at the Elkton Post Office.

CONCLUSION

For the reasons listed above, applicant's petition under 37 CFR 1.10(d) to correct the date of receipt of the papers for entry into the national stage in the United States to 10 June 2005 is GRANTED.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing. The application has a 35 U.S.C. §371(c)(1), (c)(2) and (c)(4) date of 10 June 2005.



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